

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 27, 2011

In the Matter of JONES/METHENY, Minors.

No. 304348
Kalamazoo Circuit Court
Family Division
LC No. 2009-000387-NA

In the Matter of I. METHENY, Minor.

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Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's orders terminating their parental rights to the minor children. Respondent mother's parental rights to her three children were terminated pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Respondent father's parental rights to his daughter were terminated pursuant to MCL 712A.19b(3)(g) and (j). We affirm.¹

I. BACKGROUND

The initial petition was filed and the two older children were taken out of respondent mother's care after the police found methamphetamine in the home where she lived with respondent father and the children. The drugs may have belonged to respondent father, but he was already on probation for possession of methamphetamine so he did not take responsibility for them. In any event, respondent mother admitted to using methamphetamine and marijuana on and off prior to October 2009. As a result of the drugs in her home, respondent mother was convicted of possession, placed on probation, and ordered to not have any contact with respondent father. Yet, respondent mother failed to abide by the no contact order, putting her

¹ The parental rights of B. Jones, the father of the two older children, were also terminated but he is not a party to this appeal.

relationship with respondent father above reunification with her children. This continued contact was evidenced by respondent mother's pregnancy with her youngest child, respondent father's daughter, who was removed from respondent mother's care shortly after her birth.

II. RESPONDENT MOTHER'S APPEAL

In Docket No. 304348, respondent mother argues that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence and that termination was in the children's best interests because petitioner failed to make reasonable efforts to reunify the family. We disagree.

In order to terminate parental rights, the trial court must find at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the petitioner has established by clear and convincing evidence that there are statutory grounds for termination and that termination of parental rights is also in the child's best interests, the trial court shall order termination of parental rights. MCL 712A.19b(5). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court's decision regarding the child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The condition that led to adjudication was respondent mother's use of methamphetamine and marijuana while she was caring for her children. This condition did not continue to exist at the time of the termination hearing in April of 2011. The foster care worker testified that she had no concerns that respondent mother was using methamphetamine because she never tested positive for it. Although respondent mother tested positive for marijuana from December 2009 to January 2010, she did not have any screens positive for marijuana after January 2010. The only other positive tests concerning respondent mother occurred in April 2010 (twice for opiates), August 2010 (once for opiates) and October 2010 (admitted alcohol use). Again, however, these issues were not a concern at the adjudication and were not an expressed concern at the termination hearing. Considering this evidence, the trial court clearly erred in terminating respondent mother's parental rights pursuant to MCL 712A.19b(3)(c)(i) ("The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."). Clear and convincing evidence did not establish that respondent mother continued to have issues with methamphetamine and marijuana use.

However, there was clear and convincing evidence to support the termination of respondent mother's parental rights under MCL 712A.19b(3)(c)(ii), (g), and (j). As the case progressed and the case service plan was developed, other conditions that caused the children to come within the court's jurisdiction were brought to respondent mother's attention and services were offered to rectify those conditions. These conditions included respondent mother's lack of stable housing, lack of steady employment, lack of stability, and poor judgment, which would have harmed the children if they had been in respondent-mother's custody.

Respondent mother argues that petitioner failed to make reasonable efforts to assist her in finding housing and with her compliance after the youngest child was born. Generally, petitioner

is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f; *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). MCL 712A.19a(2) states that petitioner must make reasonable efforts to reunify the family in all cases, except when aggravated circumstances are present. Here, petitioner did make reasonable efforts to assist respondent mother in reunification with her children. Respondent mother enrolled in Family Dependency Treatment Court ("FDTC"). She was offered random drug screens, 12-step meetings, weekly hearings, and a substance abuse assessment. She was referred to different parenting programs, which she did not attend. Respondent mother was offered supervised and unsupervised parenting time.

Respondent mother's actions and poor judgment prevented her from being in a position to acquire stable housing. Respondent mother never presented the foster care worker with housing or followed through with a request for housing. Respondent mother had a job at Wendy's, but her hours were cut after she became pregnant, and she was not rehired after her last incarceration. At the termination hearing, respondent mother testified that she did not even want to look for housing until she found a job.

Respondent mother argues that she was overwhelmed after her third child was born and petitioner failed to help her at that time. However, after the baby's birth respondent mother was not available to accept help from petitioner. In October 2010, she tested positive for alcohol in violation of the FDTC and her probation requirements. Respondent mother was supposed to report to Kalamazoo Probation Enhancement Program ("KPEP") for 30 days for the violation, and she would have been able to participate in services and visit with her children, but respondent mother did not report. Instead, respondent mother hid out at a friend's house. Respondent mother went to jail after the adjudication on the petition for custody of the youngest child, and served several stints in jail in the months that followed. Respondent mother was incarcerated as a result of drinking, contact with respondent father, and being unsuccessfully discharged from FDTC. Respondent mother violated the conditions of FDTC and her probation because of the choices she made while her children were in foster care.

Respondent mother's continued association with respondent father prevented her from taking advantage of all the services that petitioner had offered, prevented her from seeing her children during the times she was in jail, prevented her from maintaining employment and housing, and as a result, prevented her from rectifying other conditions that caused her children to come under the trial court's jurisdiction. In addition, respondent mother's testimony at the termination hearing provided clear and convincing evidence that she would not be able to rectify the conditions within a reasonable time considering the children's ages. Respondent mother did not have employment, was living on someone's couch, still wanted to be with respondent father, and failed to offer any plan or timeframe for reunification with her children. Considering this evidence, the trial court did not clearly err in terminating respondent mother's parental rights pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j).

Termination of respondent mother's parental rights was in the children's best interests. There was no evidence that these children were a priority in respondent mother's life. Over a year after this case started, respondent mother seemed to be no further in her attempts toward reunification. She testified at the termination hearing that she had no employment, no housing, and no plan. She had just been in jail off and on for the last five months and missed out on

crucial bonding time with her infant. There was no evidence that respondent mother was making any real or meaningful effort toward reunification. Accordingly, the trial court properly terminated respondent mother's parental rights.

III. RESPONDENT FATHER'S APPEAL

In Docket No. 304349, respondent father does not argue that the termination of his parental rights was not supported by clear and convincing evidence or that petitioner failed to make reasonable efforts toward reunification. Rather, he argues that under MCR 3.976(B)(2) the trial court should have given him 12 months to comply with the parent/agency agreement. We disagree.

MCR 3.976(B)(2) provides that, except in cases where services are not required because of aggravated circumstances, "the court must conduct an initial permanency planning hearing no later than 12 months after the child's removal from the home, regardless of whether any supplemental petitions are pending in the case." This rule clearly mandates that the trial court merely conduct a permanency planning within 12 months of the child's removal from the home, not that a respondent have the full 12 months to comply with the service plan as respondent father argues. When the language of a court rule is clear and unambiguous, judicial construction is neither required nor permitted. Such a rule is enforced as written. *CAM Constr v Lake Edgewood Condominium Ass'n*, 465 Mich 549, 554; 640 NW2d 256 (2002). Respondent father's interpretation adds words and another meaning to the plain language of the court rule, which this Court will not do. In addition, neither MCL 712A.19b(3)(g) or (j) require that a particular period of time passes before termination.

Respondent father also argues that the Supreme Court mandated a year-long review period in *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). However, in *Mason* the Supreme Court merely noted that the respondent had missed the "year-long review period" that existed between adjudication and the permanency planning hearing in that case and mandated that the respondent have a meaningful opportunity to comply with a case service plan. *Id.* at 155, 169.

In the instant case, respondent father participated in the court hearings and was given a meaningful opportunity to comply with a case service plan. Respondent father appeared at the adjudication hearing concerning his daughter and pleaded to the allegations in the petition. He was present at the two dispositional review hearings and the two termination hearings. Petitioner referred him to parenting classes, a psychological evaluation, a substance abuse assessment, and random drug screens, and offered him weekly visitation. However, respondent father failed to take advantage of these services and did not participate in the case service plan. He only sporadically visited with his newborn daughter, attending 7 of 21 available visits. Respondent father had been referred to parenting classes twice and dropped twice because of failure to attend. He attended one appointment for his psychological evaluation but failed to attend the follow-up appointment. He did not participate in a substance abuse assessment, and submitted only three drug screens during the entire case. He did not have employment or housing.

At the termination hearing, respondent father did not offer a plan for regaining custody of his child or explain why he had been unable to participate in the case services for the last 224

days. On appeal, respondent father does not explain what he would have done with more time. It is clear that respondent father knew and understood the requirements of the case service plan. However, beyond a flurry of appointments that respondent father made right before the termination hearing, there was no evidence that respondent father had begun any meaningful participation in the case service plan or toward reunification with his daughter. Rather, respondent father's major assertion at the termination hearing was that he did not want the trial court to terminate respondent mother's parental rights. The concerns present in *In re Rood*, 483 Mich 73, 119; 763 NW2d 587 (2009) and *In re Mason*, 486 Mich at 159-160, are not present here because any lack of compliance was not caused in this matter by any failure of the trial court or petitioner, but by respondent father's failure to engage in services and to participate in the plan to regain custody of his daughter.

Affirmed.

/s/ Jane E. Markey

/s/ Deborah A. Servitto

/s/ Amy Ronayne Krause